

SENATE BILL No. 452

DIGEST OF INTRODUCED BILL

Citations Affected: IC 24-5-22-10; IC 35-45-5-4.7; IC 36-8-16.5.

Synopsis: Enhanced 911 and emerging technologies. Adds definitions to IC 36-8-16.5 to include Internet Protocol enabled services and other emerging technologies in the enhanced wireless 911 system. Makes conforming amendments. Repeals a provision defining "CMRS provider".

Effective: July 1, 2007.

Wyss, Young R

January 11, 2007, read first time and referred to Committee on Homeland Security, Transportation & Veterans Affairs.

C
o
p
y



Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

SENATE BILL No. 452

A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-5-22-10 IS AMENDED TO READ AS
2 FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 10. (a) The following
3 have a right of action against a person who initiates or assists the
4 transmission of a commercial electronic mail message that violates this
5 chapter:

6 (1) A person who receives the commercial electronic mail
7 message.

8 (2) An interactive computer service that handles or retransmits
9 the commercial electronic mail message.

10 (b) This chapter does not provide a right of action against:

11 (1) an interactive computer service;

12 (2) a telephone company; or

13 (3) a ~~CMRS~~ provider (as defined by ~~IC 36-8-16.5-6~~;
14 **IC 36-8-16.5-12.5**);

15 whose equipment is used to transport, handle, or retransmit a
16 commercial electronic mail message that violates this chapter.

17 (c) It is a defense to an action under this section if the defendant

C
o
p
y



shows by a preponderance of the evidence that the violation of this chapter resulted from a good faith error and occurred notwithstanding the maintenance of procedures reasonably adopted to avoid violations of this chapter.

(d) If the plaintiff prevails in an action filed under this section, the plaintiff is entitled to the following:

- (1) An injunction to enjoin future violations of this chapter.
- (2) Compensatory damages equal to any actual damage proven by the plaintiff to have resulted from the initiation of the commercial electronic mail message. If the plaintiff does not prove actual damage, the plaintiff is entitled to presumptive damages of five hundred dollars (\$500) for each commercial electronic mail message that violates this chapter and that is sent by the defendant:

- (A) to the plaintiff; or

- (B) through the plaintiff's interactive computer service.

- (3) The plaintiff's reasonable attorney's fees and other litigation costs reasonably incurred in connection with the action.

(e) A person outside Indiana who:

- (1) initiates or assists the transmission of a commercial electronic mail message that violates this chapter; and
- (2) knows or should know that the commercial electronic mail message will be received in Indiana;

submits to the jurisdiction of Indiana courts for purposes of this chapter.

SECTION 2. IC 35-45-5-4.7, AS AMENDED BY P.L.27-2006, SECTION 60, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 4.7. (a) An interactive computer service that handles or retransmits a commercial electronic mail message has a right of action against a person who initiates or assists the transmission of the commercial electronic mail message that violates this chapter.

(b) This chapter does not provide a right of action against:

- (1) an interactive computer service;
- (2) a telephone company;
- (3) a ~~CMRS~~ provider (as defined in ~~IC 36-8-16.5-6~~;
IC 36-8-16.5-12.5);
- (4) a cable operator (as defined in 47 U.S.C. 522(5)); or
- (5) any other entity that primarily provides connectivity to an operator;

if the entity's equipment is used only to transport, handle, or retransmit information that violates this chapter and is not capable of blocking the retransmission of information that violates this chapter.

C
o
p
y



(c) It is a defense to an action under this section if the defendant shows by a preponderance of the evidence that the violation of this chapter resulted from a good faith error and occurred notwithstanding the maintenance of procedures reasonably adopted to avoid violating this chapter.

(d) If the plaintiff prevails in an action filed under this section, the plaintiff is entitled to the following:

- (1) An injunction to enjoin future violations of this chapter.
- (2) Compensatory damages equal to any actual damage proven by the plaintiff to have resulted from the initiation of the commercial electronic mail message. If the plaintiff does not prove actual damage, the plaintiff is entitled to presumptive damages of five hundred dollars (\$500) for each commercial electronic mail message that violates this chapter and that is sent by the defendant:
- (A) to the plaintiff; or
- (B) through the plaintiff's interactive computer service.
- (3) The plaintiff's reasonable attorney's fees and other litigation costs reasonably incurred in connection with the action.

(e) A person outside Indiana who:

- (1) initiates or assists the transmission of a commercial electronic mail message that violates this chapter; and
- (2) knows or should know that the commercial electronic mail message will be received in Indiana;

submits to the jurisdiction of Indiana courts for purposes of this chapter.

SECTION 3. IC 36-8-16.5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 3. As used in this chapter, "automatic number identification" means a wireless enhanced 911 service capability that enables the transmission of the ~~ten (10) digit~~ mobile ~~handset~~ telephone number used to place a 911 call.

SECTION 4. IC 36-8-16.5-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 5. As used in this chapter, "CMRS" refers to the commercial mobile radio service (as defined by 47 U.S.C. 332(d)(1)). The term includes the following:

- (1) Services commonly referred to as wireless.
- (2) Services provided by a wireless real time two-way voice communication device, including radio-telephone communications used in:
 - (A) cellular telephone service;
 - (B) personal communications service; or
 - (C) the functional or competitive equivalent of a

C
o
p
y



radio-telephone communications line used in:

- (i) cellular telephone service;
- (ii) a personal communications service; or
- (iii) a network radio access line.

(3) Any other wireless service that provides the ~~user~~ **subscriber** with direct access to a PSAP through the placement of a 911 call.

SECTION 5. IC 36-8-16.5-6.5 IS ADDED TO THE INDIANA CODE AS A **NEW** SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 6.5. As used in this chapter, "emerging technologies service" means any service or application (other than CMRS) that:**

(1) is provided through:

(A) wireline, cable, wireless, or satellite facilities; or

(B) other platforms that will be deployed after June 30, 2007; and

(2) provides a subscriber with direct access to a PSAP through the placement of a 911 call.

The term includes Internet Protocol enabled services however classified by the Federal Communications Commission.

SECTION 6. IC 36-8-16.5-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 7. As used in this chapter, "FCC order" refers to the order of the Federal Communications Commission:**

(1) FCC Docket No. 94-102, adopted June 12, 1996, with an effective date of October 1, 1996; or

(2) FCC Docket No. 05-116, adopted May 19, 2005; as applicable.

SECTION 7. IC 36-8-16.5-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 9. As used in this chapter, "mobile telephone number" means the ten (10) digit number assigned to a ~~CMRS mobile phone~~ **subscriber**.**

SECTION 8. IC 36-8-16.5-12 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: **Sec. 12. As used in this chapter, "proprietary information" includes the following:**

(1) Customer lists and related information.

(2) Technology descriptions, technical information, or trade secrets (as defined by IC 24-2-3-2).

(3) Information concerning the actual or developmental costs of wireless enhanced 911 systems that are developed, produced, or received internally by a ~~CMRS~~ provider or by a ~~CMRS~~ provider's employees, directors, officers, or agents.

SECTION 9. IC 36-8-16.5-12.5 IS ADDED TO THE INDIANA

C
o
p
y



CODE AS A NEW SECTION TO READ AS FOLLOWS
[EFFECTIVE JULY 1, 2007]: **Sec. 12.5. As used in this chapter,
"provider" refers to the following:**

- (1) A person or an entity that provides CMRS service. The term includes facilities based and nonfacilities based resellers.**
- (2) A person or an entity that provides emerging technologies service.**

SECTION 10. IC 36-8-16.5-14 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 14. As used in this chapter, "subscriber" refers to a standard subscriber or a prepaid subscriber of:

- (1) CMRS; ~~service;~~ or**
- (2) emerging technologies service.**

SECTION 11. IC 36-8-16.5-14.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 14.5. As used in this chapter, "prepaid subscriber" refers to a ~~CMRS~~ subscriber who:

- (1) pays in full prospectively; ~~for the service~~ and**
- (2) is issued an Indiana telephone number or an Indiana identification number;**

for the **CMRS or emerging technologies** service.

SECTION 12. IC 36-8-16.5-14.7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 14.7. As used in this chapter, "standard subscriber" refers to a ~~CMRS~~ subscriber who:

- (1) pays retrospectively; ~~for the service~~ and**
- (2) has an Indiana billing address;**

for the **CMRS or emerging technologies** service.

SECTION 13. IC 36-8-16.5-16 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 16. As used in this chapter, "wireless 911" means an emergency telephone system that:

- (1) provides a ~~CMRS user~~ subscriber with the ability to reach emergency services by dialing the digits nine (9) one (1) one (1); and**
- (2) is complimentary to a wireline enhanced emergency telephone system (as defined in IC 36-8-16-2).**

SECTION 14. IC 36-8-16.5-18 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 18. (a) The wireless enhanced 911 advisory board is established. The board is a body corporate and politic, and though it is separate from the state, the exercise by the board of its powers constitutes an essential governmental function.

(b) The following recommendations must be made to the governor concerning the membership of the board:

C
o
p
y



(1) The executive committees of NENA and APCO shall jointly recommend three (3) individuals.

(2) The ~~CMRS~~ providers authorized to provide:

(A) CMRS; or

(B) **emerging technologies service;**

in Indiana shall jointly recommend three (3) individuals.

(c) The board consists of the following seven (7) members:

(1) The treasurer of state or the treasurer's designee. The treasurer of state or the treasurer's designee is chairperson of the board for a term concurrent with the treasurer of state's term of office. However, the treasurer of state's designee serves at the pleasure of the treasurer of state.

(2) Three (3) members for a term of three (3) years who are appointed by the governor after the governor considers the recommendations of the executive committees of NENA and APCO that are submitted under subsection (b)(1).

(3) Three (3) members for a term of three (3) years who are appointed by the governor after considering the recommendations of the ~~CMRS~~ providers that are submitted under subsection (b)(2).

(d) A member's position may be filled by the member's designee who serves at the pleasure of the member.

(e) A vacancy on the board is filled for the vacating member's unexpired term in the same manner as the original appointment.

(f) Each member appointed under subsection (c)(2) or (c)(3) shall submit the name of a designee to the board. The board shall maintain a list of approved designees. A member appointed under subsection (c)(2) or (c)(3) may appoint a listed designee to fill the member's position under subsection (d) or to act on behalf of the member at a meeting of the board. The designee serves at the pleasure of the appointing member.

(g) A member may vote by proxy through another member.

SECTION 15. IC 36-8-16.5-22 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 22. The fund consists of the following:

(1) Service charges assessed on ~~CMRS users~~ **subscribers** in the state under section 25.5 of this chapter.

(2) Appropriations made by the general assembly.

(3) Grants and gifts intended for deposit in the fund.

(4) Interest, premiums, gains, or other earnings on the fund.

SECTION 16. IC 36-8-16.5-25.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 25.5. (a) As used in this

C
o
p
y



section, "customer" and "place of primary use" have the meanings set forth in IC 6-8.1-15.

(b) Except as provided in section 34 of this chapter, the board shall assess a monthly wireless emergency enhanced 911 fee on each ~~CMRS~~ subscriber that is a customer having a place of primary use in Indiana. A customer's place of primary use shall be determined in the manner provided by IC 6-8.1-15.

SECTION 17. IC 36-8-16.5-30.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 30.5. (a) As used in this section, "customer" and "place of primary use" have the meanings set forth in IC 6-8.1-15.

(b) Except as provided in section 34 of this chapter, each ~~CMRS~~ provider shall collect the wireless emergency enhanced 911 fee assessed under section 25.5 of this chapter as follows:

(1) As part of its normal monthly billing process, a ~~CMRS~~ provider shall collect the fee from each standard subscriber that is a customer having a place of primary use in Indiana and may list the fee as a separate line item on each bill. ~~A customer's place of primary use shall be determined in the manner provided by IC 6-8.1-15.~~ If a ~~CMRS~~ provider receives a partial payment for a monthly bill from a ~~CMRS~~ standard subscriber, the ~~CMRS~~ provider shall apply the payment against the amount the ~~CMRS~~ standard subscriber owes to the ~~CMRS~~ provider before applying the payment against the fee.

(2) A ~~CMRS~~ provider shall collect and remit to the board under section 36 of this chapter fees from its prepaid subscribers in a total amount equal to the fee amount multiplied by the number of active prepaid subscriber accounts on the last day of each calendar month.

SECTION 18. IC 36-8-16.5-31 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 31. A ~~CMRS~~ provider, as part of its monthly billing process, may not pro-rate the monthly wireless emergency enhanced 911 fee collected from the subscriber.

SECTION 19. IC 36-8-16.5-32 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 32. A ~~CMRS~~ provider is not required to take legal action to enforce the collection of the wireless emergency enhanced 911 fee for which a subscriber is billed. However, a collection action may be initiated by the board. A court finding for the board in the action may award reasonable costs and attorney's fees associated with the collection action.

SECTION 20. IC 36-8-16.5-34 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 34. A ~~CMRS~~ **mobile**

C
o
p
y



telephone number is exempt from the wireless emergency enhanced 911 fee if the subscriber is any of the following:

- (1) The federal government or an agency of the federal government.
- (2) The state or an agency or instrumentality of the state.
- (3) A political subdivision (as defined in IC 36-1-2-13) or an agency of a political subdivision.

SECTION 21. IC 36-8-16.5-35, AS AMENDED BY P.L.146-2005, SECTION 3, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 35. A ~~CMRS~~ provider may keep seven tenths of a cent (\$0.007) of the wireless emergency enhanced 911 fee collected each month from each subscriber for the purpose of defraying the administrative costs of collecting the fee.

SECTION 22. IC 36-8-16.5-36 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 36. A fee collected by a ~~CMRS~~ provider under this chapter, less the administrative fee described in section 35 of this chapter, must be remitted to the board for deposit into the fund not more than sixty (60) days after the end of the calendar month in which the fee is collected.

SECTION 23. IC 36-8-16.5-44 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 44. A ~~CMRS~~ provider is not required to provide wireless 911 service unless the elements requiring ~~CMRS~~ providers to provide wireless 911 service under the FCC order are present.

SECTION 24. IC 36-8-16.5-45 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 45. (a) All proprietary information submitted to the board or the treasurer of state is confidential. Notwithstanding any other law, proprietary information submitted under this chapter is not subject to subpoena, and proprietary information submitted under this chapter may not be released to a person other than to the submitting ~~CMRS~~ provider without the permission of the submitting ~~CMRS~~ provider.

(b) General information collected by the board or the treasurer of state may be released or published only in aggregate amounts that do not identify or allow identification of numbers of subscribers or revenues attributable to an individual ~~CMRS~~ provider.

SECTION 25. IC 36-8-16.5-46 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 46. Notwithstanding any other law, the board, a PSAP, political subdivision, ~~CMRS~~ provider, local exchange company, or an employee, director, officer, or agent of a PSAP, political subdivision, ~~CMRS~~ provider, or local exchange company, or a member of the board or the board chair, or an

C
o
p
y



employee, an agent, or a representative of the board chair is not liable for damages in a civil action or subject to criminal prosecution resulting from death, injury, or loss to persons or property incurred by any person in connection with establishing, developing, implementing, maintaining, operating, and providing enhanced wireless 911 service in compliance with the requirements established by the FCC order and rules adopted under the FCC order, except in the case of willful or wanton misconduct.

SECTION 26. IC 36-8-16.5-49 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 49. (a) Wireless emergency 911 telephone service may be used only for emergency communications by the public.

(b) Except as provided in subsection (c), a person who knowingly or intentionally uses or attempts to use wireless emergency telephone service:

- (1) for a purpose other than obtaining public safety assistance; or
- (2) in an effort to avoid ~~CMRS~~ charges **for CMRS or emerging technologies service;**

commits a Class A misdemeanor.

(c) A person who:

- (1) knowingly or intentionally uses wireless emergency telephone service in a manner prohibited by subsection (b); and
- (2) obtains **CMRS or emerging technologies** service with a value of at least one hundred dollars (\$100) from the use;

commits a Class D felony.

SECTION 27. IC 36-8-16.5-50, AS ADDED BY P.L.146-2005, SECTION 7, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2007]: Sec. 50. The utility regulatory commission may not exercise jurisdiction over the:

- (1) rates;
- (2) terms; or
- (3) conditions;

of **CMRS or emerging technologies** service, including a ~~CMRS~~ mobile phone.

SECTION 28. IC 36-8-16.5-6 IS REPEALED [EFFECTIVE JULY 1, 2007].

C
o
p
y

